

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5975 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDRAKANT DAHYABHAI FUDNAWALA

Versus

STATE OF GUJARAT

Appearance:

Mr.P.M.Thakkar, Sr.Counsel, M/S THAKKAR ASSOC. for Petitioners
MR PRASHANT G DESAI for Respondent No. 2
Mr.A.G.Uraizee, A.G.P. for Respondent No. 1 & 3

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE Y.B.BHATT

Date of decision: 24/10/96

ORAL JUDGEMENT (Per Soni J.)

In response to the notice issued by this court, one Mr.R.S.Valvi has filed affidavit-in-reply on behalf of respondent no.1.

Heard the learned Advocates.

By this petition, petitioners have challenged legality of notification under section 6 of Land Acquisition Act, 1894 ('Act' for short) dated 7.12.95 and the proceedings arising therein.

Of the numerous contentions challenging the same, one is that sec.6 notification is issued after the lapse of one year of issuance of notification under section 4 and, therefore, in view of first proviso to sub-sec.(1) of section 6, said notification is barred and void ab initio and the proceedings commenced on the basis of the same are, therefore, illegal and bad. It will be relevant to state first the facts to appreciate this contention. Date of sec.4 notification is 29.11.94. It was published in the newspapers on 2nd and 3rd December 1994. It was placed on the Notice Board of Mamlatdar on 7.12.94. It was published in the Government Gazette on 8.12.94. Thereafter, declaration under section 6 was made on 7.12.95. It was published in Official Gazette on the same date. It was then published in the newspaper on 8.12.95. Based on these facts, learned counsel Mr.Thakkar contended that declaration under sec.6 is published in the official Gazette on 7.12.95 and published in the newspaper on 8.12.95 and, therefore, the same is published beyond the period of one year of the publication of notification under sec.4 of the Act. To appreciate this contention, it will be relevant to refer to the relevant proviso to sub-sec.(1) of sec.6 of the Act, which reads as under:-

".... Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) xx xxx

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification".

How declaration under sec.6 is required to be published is provided in sub-sec. (2) of sec.6, but, in our opinion, it is altogether for a different purpose. What is contemplated on the part of Land Acquisition Officer is to make a declaration under sec.6 within one year of the publication of the notification under sec.4. Question is how to calculate the period of one year contemplated in clause (ii) of first proviso to sub-sec.(1) of sec.6 of the Act. To calculate a period, there must be terminus a quo i.e. a starting point, and

terminus ad quem i.e. destination - a terminal point. On reading clause (ii) of first proviso to sub-sec.(1) of sec.6 of the Act, to count period of one year, it is to be started from the date of last publication of the notification under sec.4. Sec.4 notification is required to be published in the manner and method prescribed therein. There, the mode is publication in Gazette, in two local newspapers and affixing of substance of such notification at convenient places in the locality where the land is situated. In the instant case, it would be the office of the Mamlatdar. When there are different modes of publication, there are all the possibilities of dates of publication being different. Therefore, question again would arise as to which date should be taken as the date of publication under sec.4. Sec.4 (1) itself provides for such a date and it is the last of the dates of such publication and the giving of such public notices. In the instant case, last date of such publication is 8.12.94 when the said notification is published in Official Gazette. Other publications are prior in time. Therefore, 8.12.94 is the starting point for calculating the period of one year for the purpose of deciding whether sec.6 declaration is made within the period of one year or not.

In clause (ii) of first proviso to sub-sec.(1) of section 6, a declaration under sec.6 can be made within one year of the last date of the publication of the notification under sec.4. Thus, there is a bar to make declaration under sec.6 after the expiry of one year from the date of publication of the notification under sec.4. This bar is not for publication of sec.6 notification after the expiry of one year. In the instant case, declaration under sec.6 is made on 7.12.95 and, therefore, it has been made within a period of one year from the "last" date of publication of sec.4 notification, being dated 8.12.94. Thus, we do not find any substance in this contention that declaration under section 6 of the Act is illegal as made after one year of publication of notification under sec.4 of the Act.

Learned counsel for the petitioners has raised other numerous contentions, but all of them are covered by the judgment of this court (Coram: B.C.Patel & Ms. R.M.Doshit JJ.) in Special Civil Application no.8633 of 1995 decided on 6th and 7th December 1995. Said matter was a cognate matter, as the land in dispute was also covered under sec.4 notification which was under challenge before that court. We, therefore, do not propose to discuss them again.

In the result, the petition fails and is dismissed. Notice discharged. No costs.
